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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,457	11/02/2001	J. Michael Weaver	KNA-0012	9579

23413 7590 11/14/2003

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EXAMINER

TRAN, LOUIS B

ART UNIT PAPER NUMBER

3721

DATE MAILED: 11/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/005,457

Applicant(s)

WEAVER ET AL.

Examiner

Louis B Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 13-26 and 28-32 is/are pending in the application.
- 4a) Of the above claim(s) 3, 7, 20 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-6, 8-11, 13-19, 21, 23-26 and 28-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to applicant's amendment, Paper No. 14, received on 10/10/2003. Applicant's cancellation of claims 12 and 27 in Paper No. 14 is acknowledged.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 4-6, 8-11, 13-19, 21, 23-26, and 28-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walter (3,057,136) in view of Ebira (5,174,430).

With respect to claims 1, 2, 4, 5, 9, 11, 13-19, 24 and 26, 28-32, Walter teaches a conveyor and shifting assembly a packaging machine comprising a plurality of lane guides 16,12 said plurality of lane guides being spaced apart to form a plurality of lanes, a moveable conveyor belt 10 having a first end and a second end, said first end located beneath one of said plurality of lanes, said movable conveyor belt delivers the product to each of said plurality of lanes, a support device 18 located at said plurality of lanes, each support device adapted to hold the product and a shifting assembly 30,32 in operable communication with said plurality of lane guides (as in claim 1), a packaging machine wherein said support device includes a support strip 18, said support strip being located at each of said plurality of lanes and is located beneath said movable

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conveyor, said support strip supports the product (as in claim 2), a machine wherein said plurality of lanes includes an appropriate number of lanes to fill a case (as in claim 4), a machine wherein said plurality of lanes includes a spare lane (as in claim 5), wherein said shifting assembly is adapted to move said lane guides from a first position to a second position, said first position and second position being spaced apart a distance substantially equal to a width of one of said plurality of lanes (as in claim 9), a sensor mounted adjacent to said plurality of lanes described in column 2, lines 10-25 (as in claim 11), a case feed assembly located beneath said plurality of lanes as seen in Figure 1 (as in claim 13), wherein said case feed assembly is configured to position a case beneath said lane guides, the case being sized to receive the product delivered into said plurality of lanes as seen in Figure 1 (as in claim 14), wherein said case feed assembly includes a feed conveyor, said conveyor is adapted to deliver the case beneath said plurality of lanes as in Figure 1 (as in claim 15), wherein said one feed conveyor is adapted to remove the case from beneath said plurality of lanes as seen in Figure 1 (as in claim 16), a controller described in column 2, lines 30-38 (as in claim 17), a packaging machine comprising a plurality of lane guides 16,12 said plurality of lane guides being spaced apart to form a plurality of lanes, said plurality of lanes includes an appropriate number of lanes to fill a case and a spare lane, a moveable conveyor belt 10 having a first end and second end, said first end located beneath one of said plurality of lanes, said moveable conveyor belt delivers the product to each of said plurality of lanes, a support device located at said plurality of lanes, said support device adapted to hold the product and a shifting assembly 30,32 in operable

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communication with said plurality of lane guides (as in claim 18), wherein said support device includes a support strip 18, said support strip being located at each of said plurality of lanes and is located beneath said movable conveyor, said support strip 18 supports the product as seen in Figure 1 (as in claim 19), a packaging machine wherein said shifting assembly is adapted to move said lane guides from a first position to a second position, and said first and second positions being spaced apart a distance substantially equal to a width of one of said plurality of lanes as seen in Figure 1 (as in claim 24), a sensor mounted adjacent to said plurality of lanes as in column 2, lines 10-25 (as in claim 26), a case feed assembly located beneath said plurality of lanes as in Figure 1 (as in claim 28), wherein said case feed assembly is configured to position the case beneath said appropriate number of lane guides, the case being sized to receive the product delivered into said appropriate number of lanes as in Figure 1 (as in claim 29), wherein said case feed assembly includes a feed conveyor, said conveyor is adapted to deliver the case beneath said plurality of lanes as in Figure 1 (as in claim 30), wherein said one feed conveyor is adapted to remove the case from beneath said plurality of lanes as in Figure 1 (as in claim 31), a machine comprising a controller described in column 2, lines 30-38 (as in claim 32), but does not show wherein said conveyor shifting assembly moves said conveyor from one of said plurality of lanes to an adjacent one of said plurality of lanes.

However, Ebira teaches the use of a conveyor shifting assembly 5 moving said conveyor from one of said plurality of lanes to an adjacent one of said plurality of lanes

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as in Figure 1 for the purpose of transporting product to a plurality of lanes as in column 7, lines 27-47.

Therefore, it would have been obvious to one having ordinary skill in the art to provide Walter with a conveyor shifting assembly in order to distribute product to a plurality of lanes.

4. Walter discloses the invention substantially as claimed including the above but does not explicitly show a spacing mechanism disposed at said second end of said moveable conveyor belt that includes a side belt assembly or a flex guide mounted to the conveyor belt and adapted to direct the product into a plurality of lanes.

However, with respect to claim 6, 8, 21 and 23, Ebira teaches the common use of side belt assemblies on conveyor belts for the purpose of regulating product flow and packaging speed as in column 6, lines 10-20.

Therefore, it would have been obvious to one having ordinary skill in the art to provide Walter with a spacing mechanism of a side belt type in order to regulate packaging speed.

5. With respect to claims 10 and 25, Ebira teaches a flex guide 2 mounted to the conveyor and adapted to direct the product into a plurality of lanes as seen in Figure 2 for the purpose of guiding the product as in column 7, lines 5-25.

Therefore, it would have been obvious to one having ordinary skill in the art to provide the modified device of Walter with flex guides in order to transport and guide product flow.

Conclusion

6. Applicant's remarks have been fully considered but are deemed moot in view of the new grounds of rejection.

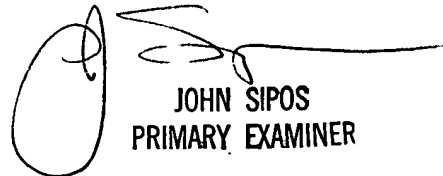
In response to applicant's argument that Walter and Ebira are not combinable, it has been held that the test for obviousness is not whether the features of one reference may be bodily incorporated into the other to produce the claimed subject matter but simply what the combination of references makes obvious to one of ordinary skill in the pertinent art. *In re Bozek*, 163 USPQ 545 (CCPA 1969).

For the reasons above, the grounds of rejection are deemed proper.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis B Tran whose telephone number is 703-305-0611. The examiner can normally be reached on 8AM-6PM Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 703-308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.



JOHN SIPOS
PRIMARY EXAMINER

lbt